

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
ELPIDIO SOTO and)	CASE NO. 08-23905 JPK
CARMEN SOTO,)	Chapter 13
Debtors.)	
*****)	
CARMEN SOTO,)	
)	
Plaintiff,)	
)	
v.)	ADVERSARY NO. 09-2140
)	
FIRST FRANKLIN MORTGAGE LOAN)	
TRUST 2006-FF9, MORTGAGE PASS-)	
THROUGH CERTIFICATES, SERIES)	
2006-FF9,)	
)	
Defendant.)	

ORDER FOR HEARING ON OBJECTION TO PLAINTIFF'S
AMENDED MOTION FOR DEFAULT JUDGMENT AND
MOTION FOR LEAVE TO FILE ANSWER ("OBJECTION")

This adversary proceeding involves the all too familiar scenario of multiple assignments of debts and mortgage obligations, either as individual instruments, or in the form of a bundled security. It is often impossible for debtors and the court to actually determine the identity of the entity presently holding a debt or a security interest, and even if the present holder is known and designated in a contested matter or an adversary proceeding in a bankruptcy case, that holder often disregards the contested matter or the adversary proceeding and leaves it to the court and the debtor to determine how to resolve something that actually requires the participation of a creditor and access to its records in order to avoid tremendous pain or expense in the future.

This adversary proceeding was initiated against the defendant designated in the caption of this order. On October 11, 2010, an amended complaint was filed, the caption of which designated the defendant as "Deutsche Bank National Trust Company, as Trustee for First

Franklin Mortgage Loan Trust 2006-FF9, Mortgage Pass-Through Certificates, Service 2006-FF9", an entity entirely different from that designated in the caption of the complaint as originally filed. This amended complaint was accompanied by a certificate of service stating that service of the amended complaint had been made upon the Deutsche Bank entity. However, the original summons in the case was directed to the entity designated in the caption of this adversary proceeding, and although the return receipt for certified mail service of process was apparently signed by the Deutsche Bank entity that summons did not effect service of process upon that entity. Thus, we have a circumstance in which service of process has not been effected upon the entity designated as the defendant in the plaintiff's amended complaint. The Clerk's entry of default as to First Franklin Mortgage Loan (etc.) was entered on December 13, 2010; on February 26, 2011, the plaintiff filed an amended motion for default judgment. At a hearing in the debtors' bankruptcy case (case number 08-23905) on February 28, 2011, the court determined that it would schedule a hearing pursuant to Fed.R.Bankr.P. 7055/ Fed.R.Civ.P. 55(b)(2) with respect to the amended motion for default judgment. Then, on March 4, 2011, an appearance was filed on behalf of BAC Home Loan Servicing LP, and an objection to the plaintiff's amended motion for default judgment was filed by that entity, which appears to state that that entity is the real party in interest as a putative defendant with respect to the relief requested by the amended complaint.

In summation, the record establishes that an amended complaint was filed designating an entity which was not properly served with process, and that the possible real party in interest as a defendant has not been served with process. The court does not mean to be unduly harsh with respect to the plaintiff's counsel because the ultimate responsibility for keeping track of service of process in matters of this nature is with the assignees/assignors in multiple assignment transactions, who hardly ever appear before the court to assert their interests in a case and leave it to the court and the debtor to sort things out on their own.

IT IS ORDERED that a telephonic conference will be held on **April 13, 2011, at 1:00 P.M.** between Attorney Ricardo Casas on behalf of the plaintiff and Attorney James Shoemaker on behalf of BAC Home Loans Servicing LP to determine the course of further proceedings in this case.

IT IS FURTHER ORDERED that the entry of default (record entry #27) is vacated.

Dated at Hammond, Indiana on March 17, 2011.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record